

# Property Tax Appeals (Municipal)

A Guide to Resources in the Law Library

- The claim that the property had been wrongfully or excessively assessed could have been appealed in one of two ways: (1) to the board of tax review [now board of assessment appeals] and from there, within two months, to the Superior Court pursuant to . . . [12-117a] or (2) by direct action to the court within one year from the date when the property was last evaluated for purposes of taxation pursuant to 12-119.” Norwich v. Lebanon, 193 Conn. 342, 346-348, 477 A.2d 115 (1984)
- “Our statutes [§ 12-117a] provide a method by which an owner of property may directly call in question the valuation placed by assessors upon his property by an appeal to the board of relief [now board of assessment appeals], and from it to the courts.” Cohn v. Hartford, 130 Conn. 699, 702, 37 A.2d 237 (1944).
- “When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof or any lessee . . . may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated.” CONN. GEN. STAT. § 12-119 (2001).
- "We recognize, of course, that General Statutes 12-119 generally is not a substitute for a timely appeal to a board of tax review [now board of assessment appeals] pursuant to P.A. 91-221, §4 (now General Statutes 12-117a), when a property owner seeks to contest an assessor's alleged overvaluation . . . . Indeed, '§12-119 requires an allegation that something more than mere valuation is at issue.'" Timber Trails Associates v. New Fairfield, 226 Conn. 407, 413 fn.9., 627 A.2d 932 (1993).
- “Our Supreme Court has held that one cannot, by bringing a common law action of indebitatus assumpsit, circumvent the statutory time limitations of General Statutes § 12-117a (appeal from property tax valuation) and General Statutes § 12-119 (claim of wrongful tax assessment).” Columbia Fed. Savings Bank. v. International Site Consultants, 40 Conn. App. 64, 69-70, 669 A.2d 594 (1996).

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## Section 1

# From Board of Assessment Appeals to Superior Court

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A Guide to Resources in the Law Library

### SCOPE:

- Bibliographic resources relating to property tax assessment appealed from a municipality's Board of Assessment Appeals to the Superior Court.

### TREATED ELSEWHERE:

- [§ 2. Appeals for wrongful property tax assessment made direct to the Superior Court under Conn. Gen. Stat. § 12-119.](#)

### DEFINITION:

- "Any person . . . claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom, . . . to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court." CONN. GEN. STAT. § 12-117a (2003).
- "In an appeal, as here, from a board of tax review [board of assessment appeals], the court performs a double function. The court must first determine whether the plaintiff has met his burden of establishing that he is, in fact, aggrieved by the action of the board. Only when the court finds that the action of the board will result in the payment of an unjust and, therefore, illegal tax, can the court proceed to exercise its broad discretionary power to grant such relief as is appropriate." *Gorin's, Inc. v. Board of Tax Review*, 178 Conn. 606, 608, 424 A.2d 282 (1979)

### STATUTES:

- CONN. GEN. STAT. (2003)  
Chapter 203. Property Tax Assessment  
§ 12-111. Appeals to board of assessment appeals  
§ 12-117a. Appeals from boards of tax review or boards of assessment appeals

### FORMS:

- 2 CONN. PRACTICE BOOK (1997).  
[Form 204.4. Appeal from Board of Tax Review \[Board of Assessment Appeal\]](#)

### RECORDS & BRIEFS:

- CONNECTICUT APPELLATE COURT RECORDS & BRIEFS (October/

November 2000), Davis v. Westport, 61 Conn. App. 834, 767 A.2d 1237 (2001).

[Amended complaint](#)

**WEST KEY NUMBERS:**

- *Taxation* # 493. Review by courts

**DIGESTS:**

- DOWLING'S DIGEST: *Taxation* # 13. Assessment appeals

**COURT CASES**

- Aetna Life Ins. Co. v. Middletown, 77 Conn. App. 21, 32, 822 A.2d 974 (2003). "The city's sole claim on appeal is that the court should have dismissed Aetna's appeal because Aetna failed to satisfy its burden of proving that the city's appraiser had overvalued the subject property. We disagree."
- Union Carbide Corp. v. City of Danbury, 257 Conn. 865, 873, 778 A.2d 204 (2001). "Because the plaintiff cannot prove that the valuation is unjust, the trial court properly refused to adjust the value."
- Davis v. Westport, 61 Conn. App. 834, 843, 767 A.2d 1237 (2001). "In the present case, the referee found that the plaintiff had established aggrievement by showing that the assessor deviated from the method he had used in all other assessments for properties located on Beachside Avenue and for other waterfront properties. Our question becomes whether, as a matter of law, on the basis of facts found by the referee, the plaintiff established that the assessment, which treated her properties as individual lots rather than one merged lot, resulted in an improper tax and, therefore, aggrieved her. We conclude that she was so aggrieved."
- Ireland v. Town Of Wethersfield, 242 Conn. 550, 556-557, 698 A.2d 888 (1997). "[W]e recently restated the basic principles of the law governing a tax appeal pursuant to § 12-117a. We observed that, in such an appeal, 'the trial court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the [taxpayer's] property. . . . At the de novo proceeding, the taxpayer bears the burden of establishing that the assessor has overassessed its property. . . . The trier of fact must arrive at his own conclusions as to the value of [the taxpayer's property] by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value.' (Citations omitted; internal quotation marks omitted.) [Xerox Corp. v. Board of Tax Review, 240 Conn. 192, 690 A.2d 389 (1997).]Id., 204.'"
- Konover v. Town Of West Hartford, 242 Conn. 727, 735, 699 A.2d 158 (1997). "Only after the court determines that the taxpayer has met his burden of proving that the assessor's valuation was excessive and that the refusal of the board of tax review to alter the assessment was improper, however, may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to 'grant such relief as to justice and equity appertains. . . .'"

**ENCYCLOPEDIAS:**

- 72 AM. JUR. 2d *State and Local Taxation* (2001).  
§§ 667-736. Assessments and levy  
§§ 971-1004. Remedies for wrongful government or official action
- 64A C.J.S. *Municipal Corporations* §§ 1783-1805 (1999).

**TEXTS & TREATISES:**

- 9A ROBERT A. FULLER, *CONNECTICUT PRACTICE, LAND USE LAW AND*

PRACTICE (1999).

Chapter 45. Municipal property tax appeals

§ 45.1. General concepts

§ 45.2. Summary of property assessment procedures

§ 45.3. Procedural requirements of C.G.S.A. § 12-117a

§ 45.4. Test in appeals under C.G.S.A. § 12-117a

§ 45.5. Methods of assessment

§ 45.6. Determining value; opinion evidence

§ 45.7. Taxation as farmland, forest land and open space land

§ 45.9. Refunds of taxes in tax appeals

- 2 JOEL M. KAYE ET AL., CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED 1996).

Authors' Comment following Form 204.4

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**Figure 1 Appeal from Board of Assessment Appeals**

**Appeal from Board of Assessment Appeals**

APPLICATION

To the superior court in and for the judicial district of      at      on *(return date)* comes *(name and residence of the applicant)*, appealing from the action of the board of assessment appeals of the town of      and complains and says:

EXCESSIVE VALUATION

1. The applicant, on *(assessment date)* was the owner *(or state other interest therein)* of certain property in that town as follows:

*(Insert description of each parcel of land, building or other property)*

2. A written or printed list of this property was duly brought in to the assessors as required by law *(this paragraph should be omitted or changed where the filing of a list of certain property is not required. See Gen.Stat., § 12-41).*

3. The assessors of the town valued the property on that assessment date as follows:

*(Describe each item and value placed thereon)*

4. The assessors determined that all property should be liable for taxation at      % of its true and actual valuation on that assessment date.

5. The valuation of this property placed thereon by the assessors was not that percentage of its true and actual value on that assessment date but was grossly excessive, disproportionate and unlawful.

6. The applicant or his attorney or agent duly appealed to the board of assessment appeals of the town claiming to be aggrieved by the action of the assessors and offered to be sworn and answer all questions concerning the property but the board made no changes in the valuations except *(state any changes made)*

Wherefore the applicant appeals from the action and ruling of the board of assessment appeals and prays that the valuation of this property on *(assessment date)* be reduced to      % of its true and actual value

Dated at *(place and date)*.

ADDITION OF ITEMS TO LIST

1. The board of assessment appeals of the town added to the applicant's list of taxable property owned by him on *(assessment date)* the following property *(state items added, with valuation placed on each)*.

2. The applicant did not, on that assessment date, own the property added to his list by the board of assessment appeals.

Wherefore the applicant appeals from the action of the board of assessment appeals and prays that the items of property added by the board be stricken from his list.

Dated at *(place and date)*.

*(Name of Applicant)*

BY \_\_\_\_\_

Attorney

CITATION AND RECOGNIZANCE

To Any Proper Officer:

By authority of the state of Connecticut you are hereby commanded to summon the town of \_\_\_\_\_ to appear before the superior court in and for the judicial district of \_\_\_\_\_ at \_\_\_\_\_ on *(return date)* then and there to answer unto the foregoing application of *(name and residence of the applicant)*.

*(Name and residence)* as principal and *(name and residence)* as surety are hereby recognized as jointly and severally bound unto said town of \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ conditioned that the applicant shall prosecute his application to effect and comply with and conform to the orders and decrees of the court in the premises.

Hereof fail not, but due service make in the same manner as is required in case of a summons in a civil action and due return make.

Dated at *(place and date)*.

\_\_\_\_\_  
Commissioner of the Superior Court

(P.B. 1963, Forms 775 and 777; see Gen.Stat., §§ 12-115 and 12-118.)

**Figure 2 Amended Complaint in Davis v. Westport**

DOCKET NO. CV96-01530535

LUELLA W. DAVIS	:	SUPERIOR COURT
VS.	:	J. D. OF STAMFORD/NORWALK
		AT STAMFORD
TOWN OF WESTPORT, ET AL	:	DECEMBER 3, 1998

**AMENDED COMPLAINT**

Pursuant to the Stipulation of the parties at the trial of this case held on November 20, 1998, the Applicants amend their appeal as follows:

**FIRST COUNT:**

1. Martin S. Davis and Luella W. Davis (collectively, the Applicant), on October 1, 1995, were the owners of certain property in the town of Westport as follows:

ALL THAT certain piece, parcel or tract of land, situated in the Town of Westport. County of Fairfield and State of Connecticut, in area 5.92 acres, and shown and delineated as Lot No. 2 and Lot No. 3 on a certain map entitled, "Frost Point Map of Subdivision For Ruth Bedford, Greens Farms, Westport, Conn. August 15, 1964", which map is on file in the Office of the Town Clerk of said Town of Westport as the Map Numbered 5850, reference thereto being hereby had.

TOGETHER WITH and subject to certain rights, easements, covenants, obligations and restrictions as set forth in a deed from Ruth Thomas Bedford to Dorothy S. Halsell recorded in the land records of the Town of Westport in Volume 223, Pages 388 and 389.

TOGETHER WITH any right, title and interest of Grantor in and to the waters and shores of Long Island Sound. Together with the rights and privileges set forth in a Warranty Deed from Ruth Thomas Bedford to James M. Doubleday and Elizabeth Doubleday dated December 14, 1964 and recorded in the Westport Land Records in Volume 221 at Page 314.

Said property is known as 60 Beachside Avenue, Westport, Connecticut and is designated as Lots 19-2 and 19-3 on Assessor's Map No. 5452-3.

2. The assessor of the town valued the property on that assessment date at \$2,238,720.00.

(Land	- \$2,226,840.00
Out Bldg.	11,880.00
Total	- \$2,238,720.00)

3. The assessor determined that all property should be liable for taxation at 70% of its true and actual valuation on that assessment date.

4. The valuation of this property placed thereon by the assessor was not that percentage of its true and actual value on that assessment date but was grossly excessive, disproportionate and unlawful.

5. The Defendant, Town of Westport, failed to apply uniform percentages to the present true and actual valuation of the properties of the Grand List in violation of Section 12-64 of the Connecticut General Statutes.

6. The fair market value of the land described above is disproportionate and discriminatory in comparison with the fair market value determined by the Assessor for similar properties located in the Town of Westport, thereby causing the Applicant to bear an unfair share of the municipal tax burden, in violation of Section 12-64 of the Connecticut General Statutes.

7. The applicant or his attorney or agent duly appealed to the Board of Tax Review of the town claiming to be aggrieved by the action of the assessor and offered to be sworn and answer all questions concerning the property but the Board made no changes in the valuation.

#### **SECOND COUNT:**

1. Martin S. Davis and Luella W. Davis (collectively the Applicant), on October 1, 1996, were the owners of certain property in the Town of Westport as follows:

ALL THAT certain piece, parcel or tract of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, in area 5.92 acres, and shown and delineated as Lot No. 2 and Lot No. 3 on a certain map entitled, "Frost Point Map of Subdivision For Ruth Bedford, Greens Farms, Westport, Conn. August 15, 1964", which map is on file in the Office of the Town Clerk of said Town of Westport as the Map Numbered 5850, reference thereto being hereby had.

TOGETHER WITH and subject to certain rights, easements, covenants, obligations and restrictions as set forth in a deed from Ruth Thomas Bedford to Dorothy S. Halsell recorded in the land records of the Town of Westport in Volume 223, Pages 388 and 389.

TOGETHER WITH any right, title and interest of Grantor in and to the waters and shores of Long Island Sound. Together with the rights and privileges set forth in a Warranty Deed from Ruth Thomas Bedford to James M. Doubleday and Elizabeth Doubleday dated December 14, 1964 and recorded in the Westport Land Records in Volume 221 at Page 314.

Said property is known as 60 Beachside Avenue, Westport, Connecticut and is designated as Lots 19-2 and 19-3 on Assessor's Map No. 5452-3.

2. - 6. Paragraphs 2 - 6 of the First Count are incorporated herein by reference.



**THIRD COUNT:**

1. Martin S. Davis and Luella W. Davis (collectively, the Applicant), on October 1, 1997, were the owners of certain property in the Town of Westport as follows:

ALL THAT certain piece, parcel or tract of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, in area 5.92 acres, and shown and delineated as Lot No. 2 and Lot No. 3 on a certain map entitled, "Frost Point Map of Subdivision For Ruth Bedford, Greens Farms, Westport, Conn. August 15, 1964", which map is on file in the Office of the Town Clerk of said Town of Westport as the Map Numbered 5850, reference thereto being hereby had.

TOGETHER WITH and subject to certain rights, easements, covenants, obligations and restrictions as set forth in a deed from Ruth Thomas Bedford to Dorothy S. Halsell recorded in the land records of the Town of Westport in Volume 223, Pages 388 and 389.

TOGETHER WITH any right, title and interest of Grantor in and to the waters and shores of Long Island Sound. Together with the rights and privileges set forth in a Warranty Deed from Ruth Thomas Bedford to James M. Doubleday and Elizabeth Doubleday dated December 14, 1964 and recorded in the Westport Land Records in Volume 221 at Page 314.

Said property is known as 60 Beachside Avenue, Westport, Connecticut and is designated as Lots 19-2 and 19-3 on Assessor's Map No. 5452-3.

2. -- 6. Paragraphs 2 - 6 of the First Count are incorporated herein by reference.

**FOURTH COUNT:**

1. Luella W. Davis (the Applicant), on October 1, 1998, was the owner of certain property in the Town of Westport as follows:

ALL THAT certain piece, parcel or tract of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, in area 5.92 acres, and shown and delineated as Lot No. 2 and Lot No. 3 on a certain map entitled, "Frost Point Map of Subdivision For Ruth Bedford, Greens Farms, Westport, Conn. August 15, 1964", which map is on file in the Office of the Town Clerk of said Town of Westport as the Map Numbered 5850, reference thereto being hereby had.

TOGETHER WITH and subject to certain rights, easements, covenants, obligations and restrictions as set forth in a deed from Ruth Thomas Bedford to Dorothy S. Halsell recorded in the land records of the Town of Westport in Volume 223, Pages 388 and 389.

TOGETHER WITH any right, title and interest of Grantor in and to the waters and shores of Long Island Sound. Together with the rights and privileges set forth in a Warranty Deed from Ruth Thomas Bedford to James M. Doubleday and Elizabeth Doubleday dated December 14, 1964 and recorded in the Westport Land Records in Volume 221 at Page 314.

Said property is known as 60 Beachside Avenue, Westport, Connecticut and is designated as Lots 19-2 and 19-3 on Assessor's Map No. 5452-3.

2. - 6. Paragraphs 2 - 6 of the First Count are incorporated herein by reference.

# **§ 2 Appeal Directly to Superior Court**

## **A Guide to Resources in the Law Library**

### **SCOPE:**

- Bibliographic resources relating to appeals for wrongful property tax assessment made direct to the Superior Court under CONN. GEN. STAT. § 12-119.

### **TREATED ELSEWHERE:**

- [§ 1. Appeals taken to Superior Court from Board of Assessment Appeals](#)

### **DEFINITION:**

- “In contrast to § 12-117a, which allows a taxpayer to challenge the assessor's valuation of his property, § 12-119 allows a taxpayer ‘to bring a claim that . . . the assessment was ‘manifestly excessive **and** could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of [the real] property . . . .’” Pauker v. Roig, 232 Conn. 335, 339-341, 654 A.2d 1233 (1995). (Emphasis added.)
- “The first category in the statute embraces situations where a tax has been laid on property not taxable in the municipality where it is situated, as in cases . . . . Here it usually, if not invariably, furnishes a remedy alternative to an appeal from the board of tax review under 12-118 [now 12-117a].
- “Our case law makes clear that a claim that an assessment is ‘excessive’ is not enough to support an action under this statute. Instead, § 12-119 requires an allegation that something more than mere valuation is at issue.’ Second Stone Ridge Cooperative Corp. v. Bridgeport, 220 Conn. 335, 339-40, 597 A.2d 326 (1991); accord Connecticut Light & Power Co. v. Oxford, 101 Conn. 383, 392, 126 A. 1 (1924).” Pauker v. Roig, 232 Conn. 335, 339-341, 654 A.2d 1233 (1995).

### **STATUTES:**

- CONN. GEN. STAT. (2003)  
Chapter 203. Property Tax Assessment  
§ 12-119. Remedy when property wrongfully assessed

### **FORMS:**

- 2 CONN. PRACTICE BOOK (1997).  
[Form 204.6. Application for relief against excessive tax valuation](#)

### **WEST KEY NUMBERS:**

- *Municipal Corporations* # 987 et seq.
- *Taxation*  
# 451 et seq. Review, correction, or setting aside of assessment  
# 536 et seq. Right of recovery of taxes paid

### **DIGESTS:**

- DOWLING’S DIGEST: *Taxation* # 13. Assessment appeals

### **COURT CASES**

- Crystal Lake Clean Water Pres. A. v. Ellington, 53 Conn. App. 142, 148, 728 A.2d 1145 (1999). “It is clear that § 12-119 is the correct procedure for an aggrieved taxpayer to challenge the improper assessment of an easement.”
- Sears, Roebuck And Company v. Board of Tax Review, 241 Conn. 749, 762, 699 A.2d 81 (1997). “As a substantive matter, therefore, the taxpayer bears a heavier burden under § 12-119 than under § 12-117a

and must establish something more egregious than mere overvaluation in order to prevail under § 12-119 . . . (under § 12-119, taxpayer must prove either absolute nontaxability of property or manifest and flagrant disregard of statutes). Despite this demanding substantive requirement, we have construed § 12-119 to afford only a discretionary, rather than mandatory, right to interest . . . It would be inconsistent for the legislature to have provided a more limited, discretionary, right to interest for a taxpayer who establishes a greater injury under § 12-119 than for a taxpayer who demonstrates a lesser injury under § 12-117a. In concluding that § 12-117a does not entitle a taxpayer to interest as a matter of right, we interpret the statutory language to avoid such inconsistency.”

- F. W. Woolworth Company v. Town of Greenwich, 44 Conn. App. 494, 498, 690 A.2d 405 (1997). “Not only is there no statutory authority that allows a town to question the value it has assessed on real estate in our trial courts, there is a statutory prohibition preventing assessors from changing an assessed valuation on an assessment list as compared to an immediately preceding assessment list solely on the basis of the sale price of the subject property.”
- Second Stone Ridge Cooperative Corp. v. Bridgeport, 220 Conn. 335, 343, 597 A.2d 326 (1991). “While an insufficiency of data or the selection of an inappropriate method of appraisal could serve as the basis for not crediting the appraisal report that resulted, it could not, absent evidence of misfeasance or malfeasance, serve as the basis for an application for relief from a wrongful assessment under 12-119.”
- E. Ingraham Co. v. Bristol, 146 Conn. 403, 408-409, 151 A.2d 700 (1959). “Mere over-valuation, without more, in an assessment of property is not enough to make out a case under 12-119, and for this the exclusive remedy is still an appeal from the board of tax review under 12-118 [now 12-117a] . . . To bring an assessment under the second category of 12-119, it must be (a) manifestly excessive and (b) one which could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property.”
- Pauker v. Roig, 232 Conn. 335, 336, 654 A.2d 1233 (1995). “In this tax appeal, the only issue is whether it is proper to revalue and reassess real property once a subdivision of the property has been approved and recorded, even though the conditions attached to the subdivision approval have not yet been fulfilled.”

#### **ENCYCLOPEDIAS:**

- 70C AM. JUR. 2d *Special or Local Assessments* (2000)
- 64A C.J.S. *Municipal Corporations* (1999).
  - § 1783. Assessment
  - § 1785. Time and frequency of assessment
  - § 1786. Mode of assessment
  - § 1788. — Description of property
  - § 1790. — Valuation
    - c. Particular method of, and factors in, valuation
  - § 1795. Equalization and review of assessment
  - § 1797. Procedure
  - § 1798. Scope of review; Hearing; Decision
  - § 1800. Relief from action of board of equalization or review
  - § 1801. — Parties
  - § 1802. — Pleadings

- § 1803. — Evidence
- § 1804. — Hearing and determination
- § 1805. — Further appeal or review

**TEXTS & TREATISES:**

- 9A ROBERT A. FULLER, CONNECTICUT PRACTICE, LAND USE LAW AND PRACTICE (1999).
  - Chapter 45. Municipal property tax appeals
    - § 45.1. General concepts
    - § 45.2. Summary of property assessment procedures
    - § 45.5. Methods of assessment
    - § 45.6. Determining value; opinion evidence
    - § 45.7. Taxation as farmland, forest land and open space land
    - § 45-8. Appeals under C.G.S. A. § 12-119**
    - § 45.9. Refunds of taxes in tax appeals
- 2 JOEL M. KAYE ET AL., CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED 1996).
  - Authors' Comment following Form 204.6

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**Figure 3 Application for relief against excessive tax valuation**

204.6

**APPLICATION**

To the superior court in and for the judicial district of \_\_\_\_\_ at \_\_\_\_\_ on *(return date)* comes *(name and residence of applicant)* applying for relief against a wrongful assessment of his property for taxation by the assessors of the town of \_\_\_\_\_ and complains and says:

1. The applicant, on *(assessment date)* was the owner *(or state other interest therein)* of certain property in that town as follows:

*(Insert description of each parcel of land, building or other property)*

2. The assessors of the town valued the property on that assessment date as follows:

*(Describe each item and value placed thereon)*

3. The assessors determined that all property should be liable for taxation at \_\_\_\_\_ % of its true and actual valuation on that assessment date.

4. A tax was laid on this property which tax was computed on the assessment which was manifestly excessive and could not have been arrived at except by disregarding the statutes for determining the valuation of such property.

5. Said tax has not been paid.

The applicant prays

1. A reduction in the amount of the tax and the assessment on which it was computed.

Dated at *(place and date)*.

*(name of applicant)*

BY \_\_\_\_\_

Attorney

CITATION

To Any Proper Officer:

By authority of the state of Connecticut you are hereby commanded to summon the town of \_\_\_\_\_ to appear before the superior court in and for the judicial district of \_\_\_\_\_ at \_\_\_\_\_ on (*return date*) then and there to answer unto the foregoing application of (*name and residence of the applicant*).

Hereof fail not, but due service make in the same manner as is required in case of a summons in a civil action and due return make.

Dated at (*place and date*).

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Commissioner of the Superior Court

(P.B. 1963, Forms 776; see Gen. Stat., § 12-119.)

# Fair Market Value

A Guide to Resources in the Law Library

## SCOPE:

- Bibliographic resources relating to determining the fair market value in tax assessment cases.

## DEFINITION:

- **Fair market value** ‘is generally best ascertained by reference to market sales . . . . Where this method is unavailable, however, other means are to be found by which to determine value . . . . A variety of such alternative methods of calculation of ‘true and actual value’ have been approved by the court: use of the cost of reproduction with an adjustment for depreciation; . . . use of the original property cost less depreciation; . . . and the capitalization of actual income approach . . . . ‘As a rule, however, [n]o one method is controlling; consideration should be given to them all, if they have been utilized, in arriving at the value of the property.’” Uniroyal, Inc. v. Board of Tax Review, 174 Conn. 386, 380, 384 A.2d 734 (1978).
- “The terms actual valuation, actual value, market value, fair market value, market price and fair value are synonymous in the determination of the valuation of property for assessment purposes, but the term ‘fair value’ is the preferable one.” Bridgeport Gas Co. v. Town of Stratford, 153 Conn. 333, 335, 216 A.2d 439 (1966).
- **Highest and best use:** “‘A property's highest and best use is commonly accepted by real estate appraisers as the starting point for the analysis of its true and actual value. . . . [U]nder the general rule of property valuation, fair [market] value, of necessity, regardless of the method of valuation, takes into account the highest and best value of the land. . . . A property's highest and best use is commonly defined as the use that will most likely produce the highest market value, greatest financial return, or the most profit from the use of a particular piece of real estate. . . . The highest and best use determination is inextricably intertwined with the marketplace because fair market value is defined as the price that a willing buyer would pay a willing seller based on the highest and best possible use of the land assuming, of course, that a market exists for such optimum use. . . . The highest and best use conclusion necessarily affects the rest of the valuation process because, as the major factor in determining the scope of the market for the property, it dictates which methods of valuation are applicable. Finally, a trier's determination of a property's highest and best use is a question of fact that we will not disturb unless it is clearly erroneous.’ (Citations omitted; internal quotation marks omitted.) United Technologies Corp. v. East Windsor, supra, 262 Conn. [11, 125-26 [2002].” Bay Hill Construction, Inc. v. Waterbury, 75 Conn. App. 832, 837, 818 A.2d 83 (2003).

**WEST KEY NUMBERS:**

- *Municipal Corporations* # 987 et seq.
- *Taxation*
  - # 451 et seq. Review, correction, or setting aside of assessment
  - # 536 et seq. Right of recovery of taxes paid

**DIGESTS:**

- DOWLING'S DIGEST: *Taxation* # 13. Assessment appeals

**COURT CASES**

- *Bridgeport Redevelopment Agency v. Gay*, No. CV99 036 67 71 (Conn. Super. Ct. Bridgeport, Jan. 28, 2004) 2004 WL 303906. "There are three accepted methods of valuation, which may be used for the assessment of real property: (1) the comparable sales approach; (2) the capitalization of income approach; and (3) the reproduction cost less depreciation or cost approach. R. Fuller, 9 *Connecticut Practice Series: Land Use Law and Practice* (2d Ed. 1999) § 45.5, p. 397-98. The court has discretion as to which method to follow. *Northeast Datacom, Inc. v. City of Wallingford*, 212 Conn. 639, 647, 563 A.2d 688, 692 (1989). In the present case, the court determined that the only method of valuation that is appropriate is the capitalization of income approach.
- *Altschuler v. Wallingford*, No. CV 02-0466846 S (Conn. Super. Ct. New Haven, Jan. 30, 2004), 2004 WL 334982. "The highest and best use of the subject property is its present use as a residence for the plaintiff and his family.

Mr. Ball relied on the market data or direct sales comparison in reaching his opinion as to fair market value. Mr. Clark primarily relied on the same approach although he also utilized cost approach. In reaching their respective opinions based on market data, the two appraisers used different comparable sales. Mr. Ball's report contained three comparables and Mr. Clark's report four comparables. Mr. Ball gave his opinion that the fair market value of the property is \$370,000.00. Mr. Clark opined that the value using the cost approach was \$452,720.00 and using the market data approach the value was \$450,000.00.

On December 12, 2002 the plaintiff filed an application for a residential loan. On the application the plaintiff stated under oath that the "original cost" of the property was \$500,000.00 and that its "present market value" was \$600,000.00. While the court is of the opinion that in determining the fair market value of the subject property the market data approach is the approach which primarily should be relied on, the value of real property placed on it by the owner is of some relevance.

The court has reviewed all of the evidence, including the reports prepared by each appraiser and finds that the comparable sales relied on by Mr. Clark are of more assistance in determining fair market value than those used by Mr. Ball. Mr. Clark's appraisal is much more detailed with respect to his comparables than is Mr. Ball's appraisal which he described as a "short form narrative appraisal."

The plaintiff has the burden of proving that the assessment by the defendant was excessive. Based on all the evidence the court finds that the plaintiff has not met his burden of proof. The court finds that the assessment levied by the defendant does represent 70 percent of the fair market value of the subject property."

- *Aetna Life Ins. Co. v. Middletown*, 77 Conn. App. 21, 32, 822 A.2d 974 (2003). "We next address Aetna's cross appeal, which challenges the court's determination of the true and actual value of the subject property. In its principal brief, Aetna generally claims that in valuing the subject property, the court "utilized the incorrect legal standard." Specifically,



Aetna claims that the court improperly utilized a reproduction cost approach instead of a replacement cost approach, and determined the subject property's 'use value' to Aetna and its employees rather than its 'fair market value.' Mindful of our deferential standard of review, we find Aetna's arguments unpersuasive and conclude that the court's determination of the value of the subject property was not clearly erroneous."

- Fertig v. Greenwich Bd., Assessment App., No. CV020190345S (Conn. Super. Ct. Stamford, Dec. 30, 2003), 2003 WL 23191974. "While the sale price is evidence of value, when other factors are present which undercut the reliability of the sale as a measure of value, it need not be accorded great weight. *Thaw v. Fairfield*, 132 Conn. 173, 175 (1945)."
- Bridgeport Gas Co. v. Stratford, 153 Conn. 333, 335, 216 A.2d 439 (1966). "Since the court found that there had been no sales of comparable gas distribution systems in Connecticut, evidence of market value in its strict sense was not available, and it is proper to utilize other evidence of fair value."
- Uniroyal, Inc. v. Board of Tax Review, 174 Conn. 380, 386, 389 A.2d 734 (1978). "In the present case, the parties agree that the paucity of sales of property similar to the Uniroyal complex renders the market data approach inadequate. Rather, both parties rely on a valuation derived from the use of an income-capitalization method, but the approaches taken by each of the two expert appraisers differ significantly."

#### **ENCYCLOPEDIAS:**

- 70C AM. JUR. 2d *Special or Local Assessments* (2000)
- 64A C.J.S. *Municipal Corporations* (1999).
  - § 1786. Mode of assessment
  - § 1788. — Description of property
  - § 1790. — Valuation
    - c. Particular method of, and factors in, valuation

#### **TEXTS & TREATISES:**

- 9A ROBERT A. FULLER, *CONNECTICUT PRACTICE, LAND USE LAW AND PRACTICE* (1999).
  - Chapter 45. Municipal property tax appeals
    - § 45.5. Methods of assessment
    - § 45.6. Determining value; opinion evidence
    - § 45.7. Taxation as farmland, forest land and open space land
- APPRAISAL INSTITUTE, *THE APPRAISAL OF REAL ESTATE* (12<sup>th</sup> ed. 2001).
  - Part I. Fundamentals
  - Part II. Data collection and analysis
  - Part III. Cost analysis
    - Chapter 13. Land or site valuation
    - Chapter 14. The cost approach
    - Chapter 15. Building cost estimates
    - Chapter 16. Depreciation estimates
  - Part IV. Sales Comparison Analysis
    - Chapter 17. The sales comparison approach
    - Chapter 18. Adjustment and analytical techniques in the sales comparison approach
    - Chapter 19. Application of the sales comparison approach
  - Part V. Income Capitalization analysis
    - Chapter 20. Income capitalization approach
    - Chapter 21. Income and expense analysis

- Chapter 22. Direct capitalization
- Chapter 23. Yield capitalization—Theory and basic application
- Chapter 24. Discounted cash flow analysis and special applications in income capitalization
- Part VI. Reconciliation and reporting
  - Chapter 25. Reconciling value indications
  - Chapter 26. The appraisal report

**COMPILER:**

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Table 1 ALR Annotations

<b>ALR Annotations On Tax Assessments</b>	
Air Rights	Maurice T. Brunner, Annotation, <i>Separate Assessment And Taxation Of Air Rights</i> , 56 ALR3d 1300 (1974).
Bond or surety	Annotation, <i>Constitutionality, construction, and application of statutes requiring bond or surety for costs and expenses in taxpayers' action</i> , 89 ALR2d 333 (1963).
Civil Rights	Kurtis A. Kemper, Annotation, <i>Right To Relief; Under USCS § 1983, For Alleged Unlawful Action By State Or Local Tax Officials</i> , 50 ALR Federal 773 (1980).
Computer Software	Janet Fairchild, Annotation, <i>Property Taxation of Computer Software</i> , 82 ALR3d 606 (1978).
Full-Value	John P. Ludington, Annotation, <i>Requirement Of Full-Value Real Property Assessments</i> , 42 ALR4th 676 (1985).
Intangible Assets	James A. Amdur, Annotation, <i>Inclusion Of Intangible Asset Values In Tangible Unpaid Property Assessments</i> , 90 ALR5th 547 (2001).
Judicial Notice	Robert A. Shapiro, Annotation, <i>Judicial Notice As To Assessed Valuations</i> , 42 ALR3d 1439 (1972).
Sale price	Kristine Cordier, Annotation, <i>Sale price of real property as evidence in determining value for tax assessment purposes</i> , 89 ALR3d 1126 (1979).
Standing	Daniel F. Sullivan, Annotation, <i>Standing Of One Tax Payer To Complain Of Underassessment Or Nonassessment Of Property Of Another For State And Local Taxation</i> , 9 ALR4th 428 (1981).
Tax Assessor	Annotation, <i>Tax Assessor's Civil Liability To Tax Payer For Excessive Or Improper Assessment Of Real Property</i> , 82 ALR2d 1148 (1962).
Tax Collector	Annotation, <i>Effect Of Certificate, Statement (Or Refusal Thereof), Or Error By Tax Collector Or Other Public Officer Regarding Unpaid Taxes Or Assessments Against Specific Property</i> , 21 ALR2d 1273 (1952).

**ALR Annotations on Tax Assessments** [cont'd]

Tax-Exempt	Edward L. Raymond, <i>Property Tax: Effect Of Tax-Exempt Lessor's Reversionary Interest On Valuation Of Nonexempt Lessee's Interest</i> , 57 ALR4th 950 (1987).
Tax Sale	Joel E. Smith, Annotation, <i>Property Owner's Liability For Unpaid Taxes Following Acquisition Of Property By Another At Tax Sale</i> , 100 ALR3d 593 (1980).
Time-Share	Gavin L. Phillips, <i>Property Taxation Of Residential Time-Share Or Interval-Ownership Units</i> , 80 ALR4th 950 (1990).

**Table 2 Standard of Appellate Review of Trial Court Decisions**

<h2 style="text-align: center;">Clearly Erroneous Standard of Appellate Review</h2>	
<p><u>United Technologies Corp. v. East Windsor</u>, 262 Conn. 11, 23, 807 A.2d 955 (2002).</p>	<p>"We review the trial court's conclusion in a tax appeal pursuant to the well established clearly erroneous standard of review. Under this deferential standard, '[w]e do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. Rather, we focus on the conclusion of the trial court, as well as the method by which it arrived at that conclusion, to determine whether it is legally correct and factually supported'. . . . 'A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.' (Citations omitted; internal quotation marks omitted.) "</p>
<p><u>Grolier, Inc. v. City of Danbury</u>, 82 Conn. App. 77, 80, 842 A.2d 621 (2004).</p>	<p>"We afford wide discretion to the court's determination of the value of property in a property tax appeal. <i>Carol Management Corp. v. Board of Tax Review</i>, 228 Conn. 23, 41, 633 A.2d 1368 (1993). When the court acts as the fact finder, it may accept or reject evidence regarding valuation as it deems appropriate. <i>First Bethel Associates v. Bethel</i>, 231 Conn. 731, 741, 651 A.2d 1279 (1995). The court in this case was presented with detailed expert and lay testimony, from which it reached a logical conclusion as to the value of the property. In light of our examination of the evidence in the record, we conclude that the judgment of the court was not clearly erroneous."</p>
<p><u>Ress v. Suffield</u>, 80 Conn. App. 630, 634-635, 836 A.2d 475 (2003)</p>	<p>"In a tax appeal, the court may 'consider any facts that are relevant to determining whether a taxpayer actually has been overassessed.' <i>Konover v. West Hartford</i>, supra, 242 Conn. [727,] 741. 'If the trial court finds that the taxpayer has failed to meet his burden . . . [it] may render judgment for the town on that basis alone.' <i>Ireland v. Wethersfield</i>, supra, 242 Conn. [550,] 557-58. On the basis of our review of the record, we conclude that the court properly determined that the plaintiff failed to satisfy his burden of establishing overvaluation.</p> <p>. . . .</p> <p>In all cases, the burden remains on the property owner, as a threshold issue, to establish overvaluation . . . ."</p>

<p><u>Aetna Life Ins. Co. v. Middletown</u>, 77 Conn. App. 21, 25-26, 822 A.2d 330 (2003).</p>	<p>“Before addressing the merits of the parties' claims, we first set forth the well settled legal principles underlying a § 12-117a tax appeal, as well as our applicable standard of review. ‘In § 12-117a tax appeals, the trial court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the [taxpayer's] property. . . . At the de novo proceeding, the taxpayer bears the burden of establishing that the assessor has overassessed its property. . . . Once the taxpayer has demonstrated aggrievement by proving that its property was overassessed, the trial court [will] then undertake a further inquiry to determine the amount of the reassessment that would be just. . . . The trier of fact must arrive at [its] own conclusions as to the value of [the taxpayer's property] by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value . . . .’”</p>
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**Table 3 Unreported Connecticut Cases on Municipal Tax Appeals**

<h2 style="text-align: center;">Unreported Connecticut Decisions Municipal Tax Appeals</h2>	
<p><b>Kawa v. Town of Hartland</b>, No. CV-03-00090729-S (Conn. Super Ct. Mar. 29, 2004), 2004 Conn. Super. LEXIS 807.</p>	<p>The court finds . . . [the Plaintiff's expert's] appraisal to be the most credible. She is an experienced and credentialed appraiser. She had a command of the particulars of the property, her methodology and appraisal principles which made her testimony at the hearing, both on direct and cross examination, quite persuasive. It is impossible to determine either the subdivision potential of the subject property or the value of that unascertainable subdivision potential without knowing the impact of the wetlands regulations on the ability to develop the property. Basing a value on the potential to subdivide the property based solely on the evidence presented in this case would be speculative. The court cannot reasonably infer the extent to which this property could be subdivided or the value to attribute to that potential.</p> <p>The court finds that the plaintiffs have borne their burden of proving that the property was over-appraised by a fair preponderance of the evidence. Having weighed the testimony of the experts and the parties' claims in light of all of the circumstances in evidence bearing on value and the court's own knowledge of the issues attendant to subdividing property located in or including a wetlands area, the court further finds that the value of the property is \$370,000.</p>
<p><b>Yankee Gas Co. v. City of Meriden</b>, No. X07-CV96 0072560S (Apr. 20, 2001), 2001 Ct. Sup. 5465, 5477, 2001 WL 477424.</p>	<p>"The defendant argues by way of special defense that the plaintiffs' payment under protest of seventy-five percent of the assessed tax bars them from bringing a claim under § 12-119. This argument is without merit. While § 12-119 permits a taxpayer to bring suit without paying a disputed tax, nowhere does the statute prevent a compliant taxpayer from paying a disputed tax, or a portion of it, in order to preserve a claim that the tax is unlawful or manifestly excessive. A fair reading of the statute leads the court to the belief that its language permits a taxpayer to appeal an unlawful tax without making any payment, such as, for example, in a situation in which the taxpayer claims the property is not located within the taxing jurisdiction, but the refusal to pay any taxes is not a prerequisite to the availability of § 12-119 relief."</p>
<p><b>Yankee Gas Co. v. City Of Meriden</b>, No. X07-CV96 0072560S (Apr. 20, 2001), 2001 Ct. Sup. 5465, 5477-5478, 2001 WL 477424.</p>	<p>"For the reasons stated, the assessments of the plaintiffs' personal property for the tax years 1991 through 1998 were unlawful and manifestly excessive. Having concluded that the assessments are unlawful, the court may provide relief as it believes just and equitable pursuant to § 12-119. The plaintiffs have also filed claims pursuant to § 12-117a which allows the court to value the property de novo. The court finds this to be the appropriate relief. Accordingly, in this instance the principal relief under the two statutes is the same."</p> <p style="text-align: right;">[Cont'd]</p>

## Unreported Connecticut Cases [cont'd]

<p><u>Brennan v. City of New London</u>, No. 555273 (Jan. 19, 2001), 2001 Ct. Sup. 1180, 1183 fn. 3, 2001 WL 88248.</p>	<p>“Although no cases can be found in which a court granted attorney's fees to a plaintiff under § 12-117a, courts have done so in tax appeal cases involving General Statutes § 12-119, the companion statute of § 12-117a, without concluding that the defendant town acted in bad faith.”</p>
<p><u>Pfizer, Inc. v. Town of Groton</u>, No. CV 96 0538437S (Sept. 17, 1999), 1999 Ct. Sup. 12664, 12667, 1999 WL 773569.</p>	<p>“In tax appeals pursuant to General Statutes § 12-117a and 12-119, the court does not review the actions of the agency, but hears the case de novo.”</p>